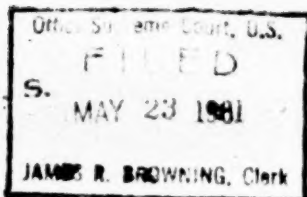


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IN THE
Supreme Court of the United States

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~~81~~ OCTOBER TERM, 1960

THOMAS N. GIGGS

v.

COUNTY OF ALLEGHENY

**RESPONDENT'S REPLY TO
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
COMMONWEALTH OF PENNSYLVANIA**

MAURICE LOUIK,
County Solicitor

FRANCIS A. BARRY
First Assistant County Solicitor

PHILIP BASKIN
Special Counsel

Attorneys for Respondent

401 County Office Building
Pittsburgh 19, Pa.

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IN THE
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NO. 910 OCTOBER TERM, 1960

THOMAS N. GRIGGS

v.

COUNTY OF ALLEGHENY

**RESPONDENT'S REPLY TO PETITION
FOR WRIT OF CERTIORARI**

I. Certiorari Should Be Denied for Lack of Jurisdiction

The petitioner sued for damages on a claim that the County of Allegheny, without formally exercising its statutory right to condemn property for airport purposes, did, in fact, take petitioner's property for such purpose.

Petitioner received due process throughout. There was a petition and hearing before the Board of Viewers, exceptions taken and heard by the Court of Common Pleas of Allegheny County, and an appeal from the decision of that court to the Supreme Court of Pennsylvania, all pursuant to statutory procedure.

The case involves complicated factual questions concerning regulations of the Federal Government, activities of commercial airlines, and the role of the County, which is that of owner of the airport involved. The only parties involved in this proceeding were the petitioner and the County of Allegheny and the sole question was whether petitioner's property was taken

Respondent's Reply to Petition.

by the County of Allegheny. The decision of the State Supreme Court was that the County of Allegheny did not take petitioner's property under state law.

Your Honorable Court has previously stated that, where a plaintiff had the benefit of a full and fair trial in state courts on the question of a taking under state statute, no due process right under the Federal Constitution is violated: *Marchant v. Pennsylvania Railroad*, 153 U.S. 380 (1894).

In that case also plaintiff obtained an award of damages in the lower court for an alleged taking under state law which award was reversed by the Supreme Court of Pennsylvania on appeal. In sustaining the decision, your Honorable Court made it clear it did not consider that any due process question was involved in the type of situation here present. At page 385 of 153 U.S., it was said:

"The first proposition asserted by the plaintiff, that her private property has been taken from her without just compensation having first been made or secured, involves certain questions of fact. . . . But it was adjudged by the Supreme Court of Pennsylvania that the acts of the defendant which were complained of did not, under the laws and constitution of the State, constitute a taking, an injury, or a destruction of the plaintiff's property.

"We are not authorized to inquire into the grounds and reasons upon which the Supreme Court of Pennsylvania proceeded in its construction of the statutes and constitutions of that State,

"But we are urged to sustain and exercise our jurisdiction in this case because it is said that the

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plaintiff's property was taken 'without due process of law,'

"It is sufficient for us in the present case to say that, even if the plaintiff could be regarded as having been deprived of (p. 386) her property, the proceedings that so resulted were in 'due process of law.'

"The plaintiff below had the benefit of a full and fair trial in the several courts of her own State, whose jurisdiction was invoked by herself. In those courts her rights were measured, not by laws made to affect her individually, but by general provisions of law applicable to all those in like condition."

Petitioner cannot contend here that he was not afforded due process under provisions of the Federal Constitution and the Constitution of Pennsylvania. The case was thoroughly considered.¹ The Supreme Court

1. In fact, the Pennsylvania Supreme Court by this time was thoroughly familiar with the case since in equity proceedings filed by the plaintiff who sought an injunction to forbid flights from the airport, the case had been before the Supreme Court on a number of occasions. *Gardner v. Allegheny County*, 382 Pa. 88, 114 A.2d 491 (1955); 393 Pa. 120, 142 A.2d 187 (1958). Actually, the case had been argued before the Supreme Court on four different occasions although there are only two reported opinions. In the first instance, the case was returned to the Court of Common Pleas for an entry of a proper order and no opinion accompanied this action. Subsequently, on a second appeal after oral arguments and briefs, an opinion was handed down on January 12, 1955. This opinion is not reported in the official reporters because upon a petition for re-argument filed by the County, there was a re-argument in which the court also permitted argument and briefs on behalf of the C.A.B. and C.A.A. which had intervened as amici curiae. (For reference to these matters see page 93 of 382 Pa., page 494 of 114 A.2d).

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of Pennsylvania did not foreclose petitioner from the possibility of recovery against the County or other parties in other forms of action. The State Court simply decided that under state law, and under the facts of this case, there had been no taking of petitioner's property by the County, and the court stated at page 418 of 402 Pa. and page 126 of 168 A. 2d. ". . . [T]he record does not show that the County of Allegheny was the efficient legal cause of any damage resulting from the flights." For your Honorable Court to attempt to delve into the complicated issues of fact already thoroughly reviewed by the State Court would be to inquire unjustifiably into the State Court proceedings.

Furthermore, the fact that two different state appellate courts have reached different results under their respective statutes, gives this Court no jurisdiction under the Federal Constitution and of course it is obvious that the Fifth Amendment is nowhere in this case.

II. Even if It Is Assumed That This Court Has Jurisdiction, the Case Does Not Merit Review

Moreover, even if it could be considered that there was a Federal Constitutional question involved, it is so intermixed with questions of fact relevant only to this case that it could scarcely be argued that this case presented such a fundamental question of constitutional law that the case should be reviewed by Your Honorable Court.

Actually, what petitioner is really complaining about is the difficulty of obtaining a remedy for his situation which is the reason he also has an equity case

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pending. As petitioner states at page 19 of his brief in support of his petition for certiorari:

"What is the real solution in the public interest? Even if it be constitutionally possible to hold the owners and pilots of aircraft in interstate flights liable for damages, the remedy is illusory. The remedy by injunction is not a solution because by the time an injunction action is brought, the public investment is already in the airport. The real solution is to place the liability upon the municipalities who build the airports, thus applying the principles enunciated in the Causby case. The cost of the easements is a small addition to the airport cost, all of which is passed on by landing fees and rental charges to the airlines and by them in turn to the traveling public in the form of fares."

But the fact that a plaintiff may have difficulty in finding a remedy does not raise a constitutional issue which gives Your Honorable Court jurisdiction over the case. Providing expedient remedies is for the legislature and not for the court.

Of course, petitioner would like to find an expedient solution to his individual problem and of course it would simplify his problem if the County did take his property, but the fact of the matter is that the County has not taken his property and the petitioner's disappointment in the Pennsylvania Supreme Court's finding that the County has not taken his property is certainly no reason to grant his petition for certiorari.

Respondent's Reply to Petition.**III. Conclusion**

The petition for writ of certiorari should be denied on the ground of lack of jurisdiction. Conceding arguendo that this Honorable Court has jurisdiction, the petition should be denied because this case does not present a fundamental question of constitutional law which merits review.

Respectfully Submitted,

MAURICE LOUIK,
County Solicitor

FRANCIS A. BARRY,
First Assistant County Solicitor

PHILIP BASKIN,
Special Counsel

Attorneys for Respondent
